

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JESUS ARVIZO**

Claimant

VS.

**MONFORT, INC.**

Respondent

Self-Insured

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Docket No. 211,563

**ORDER**

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Kenneth S. Johnson dated December 24, 1996.

**ISSUES**

The sole issue on appeal is whether claimant's need for medical treatment and/or temporary total disability benefits resulted from an injury which arose out of and in the course of his employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Order by Administrative Law Judge Kenneth S. Johnson denying claimant's request for benefits should be affirmed.

The Appeals Board agrees that the issue raised on appeal is, in effect, whether claimant's injuries arose out of and in the course of his employment. Accordingly, the issue is subject to review on appeal from a preliminary hearing order. See K.S.A. 1996 Supp. 44-534a.

The convincing evidence establishes claimant did suffer injury to his shoulder on January 21, 1996. His condition was diagnosed as adhesive capsulitis. It also establishes

claimant suffered a second injury on February 9, 1996, when he was involved in an automobile accident unrelated to his employment. It is clear that in his second accident claimant suffered injury to his shoulder. He reported the injury and sought medical treatment through Alexander B. Neel, M.D. The Administrative Law Judge found that there was no medical evidence that claimant's current problems with his left shoulder were caused by the job-related accident of January as opposed to the automobile accident in February 1996.

Claimant, on the other hand, points to the fact that the diagnosis of adhesive capsulitis was made before the automobile accident and claimant currently needs treatment for adhesive capsulitis.

The Appeals Board agrees with the conclusion by the Administrative Law Judge. Claimant's evidence does not meet claimant's burden of establishing that the current need for medical treatment and temporary total disability benefits are related to the work-related accident as opposed to the automobile accident in February. Accordingly, the decision by the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth S. Johnson dated December 24, 1996, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1997.

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BOARD MEMBER

c: John M. Lindner, Garden City, KS  
Terry J. Malone, Dodge City, KS  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director